IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY NINTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 15932 of 2004

Between:

M.Mallaiah S/o. Ramaiah
Hindu r/o. 8-4-33/C/4, Bharatnagar, Kareemnagar.

..... PETITIONER

AND

1 Commissioner for Cooperation and Registrar of Coop. Societies, A.P. Hyderabad.
2 Joint Registrar/District Cooperative Officer, Karimnagar.
3 Deputy Registrar/Audit Officer Karimnagar District Cooperative Central Bank Ltd., Karimnagar.
4 General Manager, Karimnagar District Cooperative Central Bank Limited.
5 District Collector/Person Incharge, Chairman KDCCB Limited, Karimnagar.
6 District Cooperative Officer Karimnagar.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ, order or directions particularly in the nature writ of certiorari calling the records pertaining the proceedings B5/984/2004/05 dated 28.7.2004 issued by the 5th respondent and quash the same as illegal, arbitrary, contrary to law much less violative of article 14 and 21 of the Constitution of India and also violative of Principles of natural justice and consequently directing the respondents to continue the petitioner as clerk/staff Assistant with all consequential, monetary and seniority and other service benefits in the interest of justice.

Counsel for the Petitioner:MR.M.V.RAJA RAM

Counsel for the Respondent Nos. 1 to 3 : GP FOR COOPERATION

Counsel for the Respondent NOs. 4 and 5 : MR.P.M.GOPAL RAO

The Court made the following :

ORDER:

This writ petition is filed seeking a writ of Certiorari calling for the records pertaining to the proceedings No. B5/894/2004/05 dated 28.07.2004 issued by the fifth respondent and declare the same as illegal and arbitrary.

The brief facts that are necessary for disposal of this writ petition are as under:

The petitioner was working as a clerk/Staff Assistant in the respondent-Bank and he was attending to the work of clearance of cheques/DDs in the Bank. The third respondent has conducted audit of the respondent-Bank for the year 2001-2002 and submitted a report to the second respondent on 26.3.2002 stating that one Sri.N.Sankaraiah has committed fraud on the Bank and misappropriated the amounts of the Bank. Accordingly surcharge proceedings have been conducted by the Divisional Co-operative officer in pursuance of the proceedings of the fifth dated 01.11.2002 and it was recommended to take action against the said N.Sankaraiah and the officials of the Bank for the said misappropriation. Accordingly criminal action was taken against the said N.Sankaraiah.
However, though the petitioner's name was not included in the said proceedings, the fourth respondent through his proceedings, dated 24.03.2003, ordered for enquiry against the petitioner and others under Section 51 of A.P.Co.operative Societies Act, 1964 (for short "the Act"). The petitioner, through his letter dated 31.03.2003, brought to the notice of the third respondent that he has shown the corrections made to the Branch Manager, but he did not take any action and therefore, he has nothing to do with the fraud committed by the said N.Shankaraiah.

On 14.10.2003, a charge Memo was issued to the petitioner alleging that he has violated the standing instructions of the Bank and as a result caused financial loss of Rs. 3,25,500/- to the Bank along with others. On 24.10.2003 the petitioner has requested the fourth respondent to supply a copy of the standing instructions of the respondent-Bank and it was supplied on 18.12.2003. Thereafter, the petitioner has submitted a detailed reply on 18.12.2003 and he has also participated in the enquiry. On 18.05.2004 the fourth respondent has issued a show cause notice to the

petitioner stating that the charges levelled against the petitioner were proved in the enquiry and thereby he was called upon to submit his explanation as to why the amount of Rs.3,25,000/- should not be recovered from the petitioner and others. Accordingly, the petitioner has submitted his explanation on 04.06.2004. Dissatisfied with the same, the fifth respondent has issued the impugned proceedings dated 28.07.2004 dismissing the petitioner from service of the Bank for committing gross misconduct and directing the petitioner to pay the misappropriated amount together with interest at 18% P.A.

The grievance of the petitioner is that he was not given any opportunity to rebut the allegations in the final show cause notice and when once the charge of misappropriation against Mr.C.Anantha Reddy was proved and he was imposed the penalty of reduction of basic pay into minimum time scale and was directed to remit the amount shown in the show cause notice dated 28.10.2003, it is not fair on the part of the

respondent-Bank to impose the heavy penalty of removing the petitioner from service. Hence, he prays to set aside the impugned orders dated 28.07.2004.

The fourth respondent has filed a detailed counter-affidavit stating that the petitioner has the duty to verify the D.Ds before entering in the register and if he finds any alterations or tampering of the words or figures in the D.Ds, he should return the same to the clearing house. However, the petitioner has failed to do so and thereby caused huge financial loss to the Bank. Taking disciplinary action is entirely at the discretion of the disciplinary authority and any findings or recommendations made by the Audit Officer or enquiry officer are not final. After giving reasonable opportunity to the petitioner, the enquiry was conducted and the charges levelled against the petitioner were proved. Thereafter show cause notice dated 18.5.2004 was issued to the petitioner by the fourth respondent. The punishment imposed on the other staff members, who were also involved in the said fraud, is in accordance with the gravity of the charges proved against them. The petitioner cannot compare the punishment given to other delinquents as it depends upon their responsibility. The petitioner is jointly and severally liable to pay an amount of Rs.3,25,500/- with interest at the rate of 18% per annum. Hence he prays to dismiss the writ petition.

Several contentions have been raised by the learned counsel for the petitioner, merely with regard to non-supply of documents and findings stating that they are not

based upon any evidence and the punishment imposed is disproportionate to the proved misconduct.

Equally, learned counsel for respondents 4 and 5 raised several contentions stating that the District Collector, who is the person in charge is not discharging his statutory duties and that there is a collusion among several persons, who were handling D.Ds and that there was tampering of D.Ds and therefore, they are responsible for the misappropriation of funds of the respondent-Bank.

Admittedly, an appeal shall lie against the orders of the District Collector to the Board of Directors of the fourth respondent Bank. The Board consists of General Manager, Collector of the concerned District and District Co.operative Officer.

Therefore, without entering into the merits of the case, the writ petition is disposed of with a direction to the petitioner to prefer an appeal before the Board of Directors, which is the appellate authority against the orders passed by the District Collector, and on such appeal, the Board shall dispose of the same within three months thereafter. In the absence of person in-charge committee, the fifth respondent passed the impugned order as person in-charge committee. Therefore, in all fairness, the fifth respondent-District Collector should not be a member of Board of Directors. Therefore, the Board of Directors consisting of General Manager and District Co.operative Officer alone shall dispose of the appeal.

The writ petition is accordingly disposed of. No costs.

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29.06.2005

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To

1 The Commissioner for Cooperation and Registrar of Coop. Societies,
A.P. Hyderabad.

2 The Joint Registrar/District Cooperative Officer, Karimnagar.
3 The Deputy Registrar/Audit Officer Karimnagar District Cooperative Central Bank Ltd., Karimnagar.
4 The General Manager, Karimnagar District Cooperative Central Bank Limited.
5 The District Collector/Person Incharge, Chairman KDCCB Limited, Karimnagar.
6 The District Cooperative Officer Karimnagar.

7 Two C.Cs to the G.P., for Co.operative, High Court Buildings, Hyderabad (OUT).

8 2 CD copies.